United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

OCTOBER TERM, 1909.

No. 2029. 643

GREAT FALLS AND OLD DOMINION RAILROAD COMPANY, A CORPORATION, APPELLANT,

vs.

GERTRUDE T. HILL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 28, 1909.

December 9. 1909

Shepard

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 2029.

GREAT FALLS AND OLD DOMINION RAILROAD COMPANY, a Corporation, Appellant,
vs.
GERTRUDE T. HILL.

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a Supreme Court of the District of Columbia.

At Law. No. 49915.

GERTRUDE T. HILL, Plaintiff,
vs.
GREAT FALLS & OLD DOMINION RAILROAD COMPANY, a Corporation, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration.*

Filed Nov. 7, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49915.

GERTRUDE T. HILL, Plaintiff,
vs.
THE GREAT FALLS AND OLD DOMINION RAILROAD COMPANY, a Corporation, Defendant.

The plaintiff, Gertrude T. Hill, sues the defendant, The Great Falls and Old Dominion Railroad Company, a corporation, for that heretofere, to wit, on the 23rd day of August, A. D. 1907, the defendant was, as it still is, a common-carrier of passengers for hire,

doing business in the District of Columbia and in the State of Virginia, and as such carrier owned and operated street-cars upon and across what is known as Aqueduct Bridge, which crosses the Potomac River from a point in the District of Columbia at or near the intersection of 36th and M Streets in the City of Washington to a place known as Rosslyn in the State of Virginia, at both ends of which said Bridge the defendant, on the day and year aforesaid, had and maintained regular stations or stopping places at which passengers were received upon and discharged from its said cars; and the plaintiff, on the day and year aforesaid, was a passenger on one of the cars of the defendant crossing said Aqueduct Bridge, having taken said car at the station at the north end of said Bridge in the Dis-
2 trict of Columbia intending to alight therefrom at, and having paid her fare to, the said station at the south end of said Bridge in the State of Virginia.

And the plaintiff avers that it then and there became and was the duty of the defendant, its agents and employees, to use due and proper care to cause no injury to her as a passenger upon the said car, and to provide and maintain a safe place at its aforesaid station or stopping place at the south end of said Bridge to enable the plaintiff to alight from said car in safety, and not to direct or cause the plaintiff to alight from said car in a dangerous or improper place; but in violation of its duties and in utter disregard of the safety of the plaintiff, the defendant, its agents and employees, negligently managed and operated its said car upon which the plaintiff was a passenger as aforesaid and negligently and carelessly failed to provide a safe place at the south end of said Bridge in which the plaintiff might alight in safety from the exits of said car, and negligently and carelessly caused its said car to stop at the south end of said Bridge at a dangerous and improper place, the same being a place in which on the east side of said car, the step of said car was a distance of, to-wit, thirty (30) inches above the pavement of the street or road, and with full knowledge of the premises, neglected and failed to place any barrier or give any warning to prevent the plaintiff from alighting from said east side of said car in said dangerous and improper place, and through its agent and employee, the motorman in charge of said car, negligently and carelessly obstructed and closed the west exit from the platform of said car, and thereby
3 negligently and carelessly directed and turned the plaintiff to the east side of said car and caused her to alight therefrom in the unsafe and dangerous place aforesaid: By reason of all of which negligence and carelessness of the defendant, its agents and employees, the plaintiff without any negligence or want of due and proper care on her part, was caused to alight and to step from said car into and upon said dangerous place, a distance of, to-wit, thirty (30) inches as aforesaid to and upon the pavement of the street or road aforesaid, and through the negligence and carelessness of the defendant, and its agents as aforesaid, was caused to break and shatter the bone or bones of her left hip and to be thrown violently upon the pavement of the street or road aforesaid, and to be bruised, maimed and wounded; in consequence whereof she became sick, sore

and lame, and has suffered and will continue to suffer great pain and anguish of body and mind, and her hip and leg has been permanently injured and crippled, and she has been permanently injured in her bodily health, and her power to perform labor or undergo physical exertion has been permanently and seriously impaired, and she has been unable to attend to her lawful and ordinary affairs, and has been confined to her bed and room from the day and year aforesaid hitherto, and has been obliged to pay out and expend and will be compelled hereafter to pay out and expend large sums of money in endeavoring to be cured of the hurts and injuries received as aforesaid; all to her great damage in the sum of Twenty Thousand Dollars ($20,000).

4 Wherefore, the plaintiff brings this suit and claims damages in the sum of Twenty Thousand Dollars ($20,000), besides costs.

LECKIE, FULTON & COX,
Attorneys for Plaintiff.

Notice to Plead.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of service hereof; otherwise judgment.

LECKIE, FULTON & COX,
Attorneys for Plaintiff.

Defendant's Plea.

Filed Dec. 3, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49915.

GERTRUDE T. HILL
vs.
THE GREAT FALLS AND OLD DOMINION RAILROAD COMPANY, a Corporation.

Now comes the defendant through its attorneys, and says that it is not guilty in manner and form as alleged in the declaration herein.

LAMBERT & McLEAN,
Attorneys for Defendant.

5 *Joinder of Issue.*

Filed Dec. 5, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49915.

GERTRUDE T. HILL
vs.
THE GREAT FALLS AND OLD DOMINION RAILROAD COMPANY, a Corporation.

The plaintiff joins issue upon the plea of the defendant filed in the above entitled cause.

LECKIE, FULTON & COX,
Attorneys for Plaintiff.

Memorandum.

February 11, 1909.—Verdict for Plaintiff for $5000.

Defendant's Motion for a New Trial.

Filed Feb. 15, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 49915.

GERTRUDE T. HILL, Plaintiff,
vs.
GREAT FALLS & OLD DOMINION RAILROAD COMPANY, Defendant.

6 Now comes the defendant in the above entitled cause, the Great Falls & Old Dominion Railroad Company, by its attorney, Wilton J. Lambert, and moves the court to set aside the verdict for the plaintiff rendered in the above entitled cause on the 11th day of February, A. D. 1909, and to grant a new trial to defendant in said cause for the following reasons:

1. Because the said verdict its contrary to the evidence in said cause.

2. Because the said verdict is contrary to the weight of the evidence in said cause.

3. Because of errors of law committed by the trial justice in excluding evidence offered by the defendant, and admitting evidence offered by the plaintiff over the objection of the defendant.

5. Because of errors of law committed by the trial justice in refusing to grant certain instructions prayed by the defendant.

6. Because of errors of law committed by the trial justice in granting certain instructions offered by the plaintiff over the objection of the defendant.

7. Because of errors of law committed by the trial justice in his charge to the jury over the objections of the defendant.

WILTON J. LAMBERT,
Attorney for Defendant.

7 Supreme Court of the District of Columbia.

FRIDAY, *February* 19*th*, 1909.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, Chief Justice, presiding.

* * * * * * *

At Law. No. 49915.

GERTRUDE T. HILL, Plaintiff,
vs.
THE GREAT FALLS AND OLD DOMINION RAILROAD COMPANY, a Corporation, Defendant.

Upon consideration of defendant's motion for a new trial filed herein, it is ordered that said motion be, and the same is hereby overruled and judgment on verdict is ordered; wherefore it is considered and adjudged, that the plaintiff herein recover of defendant herein the sum of Five Thousand Dollars ($5000.00) for her damages as aforesaid assessed, together with costs of suit to be taxed by the clerk, and have execution thereof.

From the aforegoing, the defendant by its attorney in open court, notes an appeal to the Court of Appeals: whereupon, the penalty of a bond to operate as a supersedeas is fixed in the sum of Seven Thousand Dollars, or for costs in the sum of One Hundred Dollars.

Memorandum.

March 12, 1909.—Supersedeas bond approved & filed.

8 Supreme Court of the District of Columbia.

FRIDAY, *April* 2*d*, 1909.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, Chief Justice, presiding.

* * * * * * *

At Law. No. 49915.

GERTRUDE T. HILL, Plaintiff,
vs.
GREAT FALLS AND OLD DOMINION RAILROAD COMPANY, Def't.

Comes now the defendant by its attorney and presents to the Court the Bill of Exceptions taken at the trial of the cause, and prays that

the same be signed, *nunc pro tunc*, whereupon, the Court takes the same under consideration. Further upon motion of Mr. Lambert, attorney for defendant this term is hereby prolonged thirty eight days within which time to settle said Bill of Exceptions.

* * * * * * *

MONDAY, *April 26th,* 1909.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, Chief Justice, presiding.

* * * * * * *

At Law. No. 49915.

GERTRUDE T. HILL, Plaintiff,
vs.
THE GREAT FALLS & OLD DOMINION RAILROAD COMPANY,
Defendant.

Ordered, that the time within which to file a transcript of the record herein in the Court of Appeals, is hereby extended to
9 June 1st, 1909, inclusive.

* * * * * * *

MONDAY, *May 10th,* 1909.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, Chief Justice, presiding.

* * * * * * *

At Law. No. 49915.

GERTRUDE T. HILL, Plaintiff,
vs.
GREAT FALLS & OLD DOMINION RAILROAD COMPANY, a Corporation,
Defendant.

The Court having this day signed the Bill of Exceptions heretofore submitted herein, now orders the same of record *nunc pro tunc.*

Bill of Exceptions.

Filed May 10, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 49915.

GERTRUDE T. HILL, Plaintiff,
vs.
GREAT FALLS & OLD DOMINION RAILROAD COMPANY, a Corporation,
Defendant.

Be it remembered, that the above entitled cause came on for trial before Mr. Chief Justice Clabaugh and a jury on the Fourth day of February, 1909.

Whereupon, the plaintiff to maintain the issues on her part
10 joined offered as a witness THOMAS D. GANNAWAY, who testified that he lives in Fairfax County, Virginia; that he had been living in Alexandria County, and lived in Fairfax County from May, 1906, up to the year preceding, since which time he has been living at Balston, Virginia; that he is a clerk in the Treasury Department and comes in from his residence every day. When he first moved out there and up to July, 1907, he came by the way of the Aqueduct Bridge all the time; since then he frequently comes by the way of the Aqueduct Bridge and part of the time by the Twelfth Street line; that up to July, 1907, he would come and return every day; that he is familiar with the place where the bridge cars stop at the south end to transfer passengers from the Georgetown side over to the Virginia side; that he is familiar with the conditions which extend from the end of the bridge down to the end of the platform; that the road all the way from the end of the bridge is elevated several inches above the level of the street.

Thereupon the witness further testified:

Q. Are you familiar with the distance from the car step down to the roadbed? A. Yes, sir.

Q. On the east side of the car? A. Yes, sir. I have frequently gotten off there.

Whereupon counsel for defendant moved to strike out the answers to the foregoing questions on the ground that what the witness has done is absolutely immaterial to this case. But said motion was overruled, to which action of the court in overruling said motion counsel for the defendant excepted, and the said exception was then and there duly noted upon the minutes of the court.

11 Witness further testified as follows:

Q. Now answer the question? A. I am familiar with the conditions, because I have gotten off there a number of times.

To which question and answer counsel for the defendant objected, for the same reasons, but said objection was overruled, to which action of the court in overruling said objection counsel for the defendant excepted, and said exception was then and there entered upon the minutes of the court.

Witness thereupon continued his answer as follows:

A. (Continuing:) And I know it to be a considerable distance down. The first time I stepped off I miscalculated the distance——

Mr. LAMBERT: I object to this.

The COURT: That is not material. You can tell the conditions there from the bridge to the end of the platform. You have been asked now what are the conditions in respect to the location of the tract to the ground on that side.

The WITNESS: Well, the track is elevated the whole distance from the end of the bridge out to the end of the platform, elevated above the street.

Witness thereupon testified that it was elevated something like twelve or fifteen inches; that he should judge the car steps on the

east side of the car were elevated about two and one half feet above the driveway.

Witness thereupon testified as follows:

Q. Now with respect to passengers being discharged from the car; are you familiar with that? A. Very much so.

12 Q. At that point? A. Yes, sir.

Q. To what extent is the east side of the car used in discharging passengers or taking them on?

To which question counsel for the defendant objected on the ground that the question put had nothing to do with what occurred at the time of the accident mentioned in this case; that it is an attempt to prove a custom or invitation without evidence showing that the plaintiff had knowledge of such a custom or invitation; that in this case from the opening statement of counsel the plaintiff knew nothing about the situation at the end of the bridge and had never visited the point before, it would be impossible to show knowledge of the plaintiff. Counsel for the plaintiff in response to a question of the court stated that the evidence was offered to show that the getting off on the east side where there was no platform was a usual habit permitted by the company. The court overruled said objection on the ground that it was not offered to prove any particular acts but to prove the fact that it is the ordinary custom for people to get off on either side, to which action of the court in overruling said objection counsel for the defendant excepted, and said exception was then and there entered upon the minutes of the court.

The witness thereupon answered:

A. Well, I could not give a definite percentage but there are a large number that get off on the east side and have been every day I pass there, getting on and off. I frequently do it myself.

Thereupon witness was asked the following question:

13 Q. Were the conditions the same in 1907 when you seemed to travel there every day that they were during the entire year of 1907?

To which question counsel for the defendant thereupon objected.

Thereupon the witness was asked the following question:

Q. What changes, if any, have been made in the roadbed there by that platform?

To which question counsel for the defendant objected.

In response to a question of the court as to what was expected to be proved by this question counsel for the plaintiff stated that he expected to show that the conditions at the time and place of the accident were the same with respect to the elevation of the car step down to the roadbed into which she fell, as they were when the witness had the experiences to which he (counsel) had alluded in a former question. But the court overruled the objection; to which action of the court in overruling said objection counsel for the defendant excepted, and said exception was then and there entered upon the minutes of the court.

Witness thereupon stated as follows:

A. To my knowledge there has not been any change since I have been going out there, since May, 1906.

On cross examination the witness testified that up to July, 1907, he was going that way every day, morning and evening; that he was living at that time at West Falls Church; after July, 1907, the other line was opened from 12th St., and while he frequently came across the Aqueduct Bridge, most of the time he took the Mr. Vernon Line down at 12th St. That he did not make any particular
14 observations as to the conditions of the Virginia end of the bridge on these trips that he made subsequent to July, 1907, but he usually got off on the side of the car that was most convenient to his car; that he did not make any particular examination of the roadbed and the distance from the step of the car after July, 1907, more than noticing the height of the step.

Whereupon to further maintain the issues on her part joined, plaintiff produced as a witness Mr. FRANK L. BALL, who testified that he resided at Clarendon, Virginia, and had been living there for twenty-three years; thereupon the following testimony was given:

Q. Are you familiar with the conditions surrounding the place where the bridge car of the Great Falls & Old Dominion Railway stops at the south end of the Aqueduct Bridge? A. Yes, sir.

Q. Now, just tell us about the conditions there, beginning there at the end of the bridge and up to and including the platform on the east side of the driveway where that car stops, opposite the Arlington Station?

To which question counsel for the defendant objected for the reasons given in his objection to similar questions, and motions to strike out testimony during the examination of the preceding witness, Mr. Gannaway. But said objection was overruled, and counsel for defendant noted an exception, which exception was then and there noted upon the minutes of the court.

A. When they constructed this track, they raised it above the street level there. Right at the end of the bridge, it is prob-
15 ably about, if the bridge car was standing there, the step would be about two feet above the level of the street, and it gradually rises as it goes to the south until right about opposite the Arlington Station it is probably thirty inches or three feet above the level of the street.

Q. How long has that condition existed there to your knowledge? A. Ever since the road was constructed.

Witness further testified that the elevation of the Old Dominion track is not the same along the side of the platform and in front of it on the east side of the road, but that it increases as it goes from the bridge south.

Thereupon the witness testified as follows:

Q. What have you observed, Mr. Ball, with respect to the use made of the east side of the car in getting on and off there where it stops?

To which question counsel for the defendant objected, on the grounds given in the similar objections during the testimony of Mr. Gannaway, but said objection was overruled, to which action of the court in overruling said objection counsel for the defendant excepted, and said exception was then and there duly noted upon the minutes of the court.

A. A great many passengers used the east side as well as the west side. They very often just go to the door and very often an equal number go to the east side as to the west side.

Witness further testified that this would happen if the motorman did not stand in the way on the east step and prevent passengers from getting off on that side.

16 On cross-examination witness testified that the lowest step of the car was about two feet from the roadway at the north end of the platform; that he was working at the Alexandria Court-house, and used to come to Washington frequently; that he has seen the motorman stand there in the way and prevent passengers from getting off on the east side; that he has seen ladies get off there on the east side, when the motorman was not standing there.

To further maintain the issues on her part joined, plaintiff produced as a witness Miss MARGARET HILL, who testified that she was the daughter of the plaintiff, and was with her mother on August 23rd, 1907, when she met with an accident at the south end of the Aqueduct bridge; that a Miss Tullidge accompanied them; that their party took the car on the Georgetown side of the Aqueduct bridge; that her mother had not been to Washington before to witness' knowledge; that when they reached the south side of the Aqueduct bridge at a point almost opposite the Arlington Station, the car came to a complete stop for them to get off, and they arose to leave; that she started toward the rear door, and almost instantly she looked around and saw her mother and cousin were not following her and she then turned and followed them. At that time witness was about 7 feet from her mother who was moving to the front door of the car and witness was about 3 feet in the rear of Miss Tullidge who was following her mother. Witness testified that just as she reached front door and was in the act of stepping through front door on to the front platform, she was terribly startled to hear the motor-

17 man give a cry as though he were frightened which frightened the witness who thought something had happened. The witness stepped through the door, looked around and saw her mother lying on the ground. The motorman leaned forward, made a motion, and witness thinks he grabbed her cousin (Miss Tullidge) but she does not know. The motorman was standing on the platform at that time she believes a little towards the west or the right hand side, and she saw him turn and lean forward. There was a woman talking to him; her cousin was away over on the platform on the east side of the car, between the door and the step, when the motorman gave that outcry. When the motorman gave that outcry the witness was just ready to step out of the inside of the car on to the platform and thinks she had one foot in the act of stepping

out. There was no other outcry before that one. There was no guard or anything on the left or east side of car to prevent anyone getting off on that side. Witness started to get off on left side but motorman would not let her go that way but made her turn and go off on the right side. Her mother was carried over to the Arlington Station and from there she was conveyed in an ambulance to the hospital where she remained for ten weeks. Prior to this accident her mother's health had been excellent. Her suffering from the accident was distressing—she could not sleep and she became hysterical. While she has greatly improved she has never recovered her vitality that she had before the accident nor her strength. Her hip was broken by the accident and there has been shortening of the leg and she has to wear a shoe built up fully an inch on the outside besides wearing something inside, and she has to carry a cane
18 wherever she goes. After she was gotten home she was compelled to use two crutches and required someone of the family to help her in getting around on the crutches until about February and from February to sometime in April she was able to get around simply on a crutch and cane. Then she was able to get around with cane and crutch and sometime in June she was able to lay aside the crutch and has since used the cane. Until April, 1908, her mother was unable to attend to any of the household affairs or duties that it was her custom to attend to prior to her injury. Prior to her accident her mother had always attended to the duties of the household and had done the work herself; since she was compelled to pay help. In going up and down stairs she has to take hold of the bannisters and drag herself up. That her home is in Richmond, Indiana, and her mother and she had come to Washington on a little sightseeing trip and also to see their cousin, Miss Tullidge.

On cross-examination witness testified that there are four besides her mother that compose their household; that she is a teacher; that this accident happened on the 23rd of August, and they arrived in Washington the Tuesday before; the accident happened on the following Friday; that they started across the bridge at about eleven o'clock in the morning; she denied that she asked her mother "why she rushed out so fast," or how she got hurt or anything of that kind; she said her mother did not rush out; that her mother did not say to her that if she (witness) had gone ahead, she (her mother) would not have gotten this fall, or anything of this kind;
19 that witness did not reply to that remark "you don't give anybody a chance, but rush right out ahead of us;" that their party was not particularly in a big hurry to get through their sight seeing; that they were going to leave for home that evening, and this trip to Arlington was the last thing that they intended doing; that they were to take the 3.40 train.

On re-direct examination witness testified that she went back to the scene of the accident two or three days afterwards, and then she was asked the following question:

Q. Did you observe this same car stopping at the same place it stopped at the time your mother was hurt?

To which question counsel for the defendant objected.

The COURT: Miss Hill, do you know where the car stopped?

WITNESS: Almost directly——

The COURT: The second time you went back, do you know where it stopped with reference to the first time?

The WITNESS: I think it stopped about the same place, within a foot or so of the same place.

Thereupon the Witness was asked the following question:

Q. Now, Miss Hill, how high was the step from which your mother stepped off down to the ground where she fell?

To which question counsel for the defendant objected, on the ground that the witness has not said that the car stopped at the same place, but that she said "she thought she saw it stop" at the same place or near there within a short distance of it; she does not place the stopping of the car on the second occasion with sufficient definiteness to fix something that is capable of actual demonstration.

The COURT: Well, do you insist upon it, Mr. Fulton?

20 Mr. FULTON: Yes, sir; the witness having stated the car stopped within a foot or two at the outside.

The COURT: I think there may be some doubt about it, but I think she can answer the question.

A. The height of the step from the ground?

Q. Yes, Ma'am. A. About to my waist line.

Witness testified that on the second occasion she was at the scene of the accident she stood across at the little station and observed the bridge car where it stood at the south end of the bridge, but that on the first occasion when her mother was injured she stood right beside the car step while her mother was lying on the ground, she was right at the car step close to the car and it seemed to her that the step must have been to her waist line.

Thereupon the witness was asked the following question:

Q. Was your mother wearing glasses on that day? A. Yes.

Mr. LAMBERT: I object.

The COURT: I think the question can be asked.

A. Yes Mr. Fulton she always wears her glasses.

Mr. LAMBERT: I move to strike out the last question and answer.

The COURT: Motion overruled and exception.

Thereupon the plaintiff to further maintain the issues on her part joined, produced as a witness Miss SARAH TULLIDGE, who testified that she resided at 812 12th St., N. W., and has resided in Washington for two and one-half years; that she is acquainted with Mrs.

21 Gertrude T. Hill, the plaintiff in this case; that Mrs. Hill visited her on or about August 23, 1907; that she accompanied Mrs. Hill and her daughter on the car going across the Aqueduct bridge; that they entered the car at the Georgetown station on the north side of the bridge, and sat down on the east side; near the middle of the car, Mrs. Hill being nearest the door: witness sat between Mrs. Hill and her daughter; that when the car came to a full stop Mrs. Hill and herself got up to leave, and a young woman went out ahead of them, and was talking to the motorman; that this

woman was standing close to the wheel on the right hand side of the platform, and the motorman was standing right there at the wheel, close to it, and the two of them were talking together; they were on the right hand side going out of the car; that the plaintiff was about three feet in front of the witness when she passed out of the front door, and stepped off the left side of the car; that plaintiff was walking with carefulness at the time and took hold of the bar before she stepped down; as witness was about to follow the plaintiff the motorman said: "Not that way, madam"; that plaintiff had about struck the ground when the motorman called out; witness was about to take the step down, but plaintiff had already taken the step to the ground; that there was no bar or gate or anything across that side of the car, or any sign of any kind to indicate which way they should go; that this young woman talking with the motorman blocked the way and witness could not see any platform on the west side; that she got off on the right hand or west side and walked around to where
the plaintiff was, and plaintiff was taken to the hospital in the
22 ambulance; that the step of the car from which plaintiff stepped was about three feet above the ground; that when they were getting off the Arlington car was standing on the east side at the station; that plaintiff was wearing glasses at the time of the accident; that she remained in the hospital about ten weeks.

On cross examination witness testified that they boarded car at the north end of the bridge a few minutes after eleven; that when they reached the south end of the bridge and had come to a stop they arose to go out, Mrs. Hill being in front of the witness; when she reached the door in the south end of the car Mrs. Hill was about three feet ahead of the witness; that there was a young woman talking to the motorman on the platform and blocked the way to the right; witness did not notice particularly the hands of the woman talking to the motorman. When witness reached the door of the car, Mrs. Hill was stepping down the steps, witness thinks just before she was ready to step down Mrs. Hill had taken the step and it was then that the motorman called out and when he called out Mrs. Hill had struck the ground and it was too late to save her but it did save the witness. Mrs. Hill was stepping down and was cautious, having her hands on the railing of the car; she was stepping from the second step down to the ground.

Thereupon, to further maintain the issues on her part joined, plaintiff produced as witness, Dr. W. C. GWYNN, who testified that Mrs. Hill had a fracture of the hip, the fracture being between the knob and the trochanter of the left hip right in the joint at what is
known as the neck of the femur. The limb is one inch
23 shorter than the other leg, due entirely to the fracture; that she has loss of motion in the knee joint, loss of flexion and can only flex the leg a short elevation; that in extension she cannot put her leg back all he way, which greatly interferes with her going up and down steps; there is a certain amount of weakness in the leg and she walks at present with a good deal of difficulty. Her nervous condition is a great deal better but she is still very nervous and ex-

citable, and will always walk with a limp and will have a certain amount of permanent weakness. There will be certain amount of pain, especially on rainy days or change in the weather, and on account of age and general condition he thinks she will have a certain amount of pain; that the shortening of the leg is permanent and that she will not lead the active existence which she led prior to the accident; and that the injury would have quite an effect on her nervous system and cause her a great deal of worry and depression, that the inability to flex will probably be permanent.

On *cross-examination* he stated that there was a good deal of callous formation about the joint of the injured hip; that under absorption a certain amount of it would disappear, but that he thought there would remain a certain amount of permanent loss; that while a great deal of this formation had been absorbed witness thought that the conditions existing at this time would probably remain in *statu quo;* that at this late date he doubted whether or not there would be further absorption of such formation.

Thereupon Dr. GEORGE C. VAUGHAN was introduced on
24 behalf of the plaintiff and testified substantially as follows as to the injuries of the plaintiff. That he was called to attend the plaintiff in connection with Dr. Gwynn while she was in the Georgetown Hospital; that the plaintiff was suffering from a fracture of the neck of the thigh bone, the femur. This fracture was between the knob and the head of the trochanter. It caused a great deal of pain; patient was unable to walk and had to be put to bed andstrapped so that adhesive plaster could be put on the leg and thigh with weights on the other end to pull it out to keep it from shortening so much. There was a good deal of shortening at first but by this method of treatment the shortening was diminished considerably, so that she finally recovered with a shortening of about one inch. That the witness and Dr. Gwynn, in connection with Dr. Frye, the physician for the defendant, made an examination of the plaintiff just three days before the witness testified that by that examination was found that the plaintiff's leg was about an inch shorter and that there was limitation in the motion of the hip joint; the motion of flexion and extension were both limited. By "flexion" the witness meant the plaintiff could not lift her leg up but a short distance; that she could not tie her shoe on that side because she cannot get down to it; the extension motion is not natural; she cannot carry the leg back as far as she should; that interferes with walking. The shortening of the leg is absolutely permanent; as to the permanency of the impaired motion, witness said that may or may not be removed as time goes on. If removed, the motion would be normal. That would
mean absorption of the callous, which is probably the cause of
25 the hindered motion, and that sometimes takes as long as two years. If not healed in that time it probably never would heal. This callous formation is sometimes permanent and would interfere with the movement of the leg. In the light of the length of time which has passed since the injury and of the fact that the impaired motion exists to-day in the limb, the witness said that the im-

pairment of the motion in all probability was permanent. Witness further said that plaintiff still suffers a great deal; that she was an unusual sufferer from an injury of this kind; that she was exceedingly nervous, could not bear the weights on her leg and they had to be taken off; that while she was confined in the hospital she had crying spells and every evidence of extreme nervousness; she did not rest well, could not sleep.

On *cross-examination,* witness said if the callous formation is absorbed, it would improve the motion of the injured leg and from what he could learn from the witness, he judged there had been great improvement in the motion, which he thought was due to the absorption of the callous formation and the strengthening of the muscles.

Thereupon plaintiff recalled as a witness FRANK L. BALL, who testified that the platform rises gradually from the north and towards the south.

Thereupon the witness was asked the following question:

Q. Mr. Ball, do you know what the condition of the drive-way was in the month of August, 1907, on the east side of this track? A. Yes, sir.

Q. Now you may tell us whether that was an even sur-
26 'face or irregular?

To which question counsel for the defendant, objected, but said objection was overruled by the court, and counsel for the defendant excepted, which exception was then and there noted upon the minutes of the court.

A. It was an even surface.

Thereupon to further maintain the issues on her part joined, the plaintiff herself took the stand, and testified that her home was Richmond, Ind.; that she was in Washington on the 23rd day of August, 1907; that she was in Washington once before when quite a little girl, perhaps nearly forty years before; that she was 59 years of age, 57 when the accident occurred. That on August 23, 1907, she took the bridge car crossing the Aqueduct Bridge at Georgetown; that she had never ridden across nor seen that bridge before; that her daughter and her cousin, Miss Tullidge, were in company with her at that time; that when they entered the car they took seats on the left side thereof, and witness thought that she was sitting about four feet from the front door. There was no one sitting between her and the front end of the car. The left side of the car or the side of the car on which she, her cousin and her daughter were sitting, was the east side as they crossed the bridge. Miss Tullidge was sitting next to the witness and the daughter of witness was sitting next to Miss Tullidge, both on the right of the witness; there was a young woman sitting opposite the witness and there were some three or four people sitting in the rear of the car. All these people rode across the bridge with the witness.

27 Whereupon the following question was asked:

Q. Mrs. Hill, I observe you wear glasses. What do you wear them for?

Mr. LAMBERT: One minute; I object.

The COURT: What is your objection, Mr. Lambert?

Mr. LAMBERT: That has nothing in the world to do with this case, what she wears glasses for, or that she wears glasses, I submit has nothing to do with this case.

The COURT: Do you insist upon it, Mr. Fulton?

Mr. FULTON: Yes, sir.

Mr. LAMBERT: I assume it is only brought in on the theory that some possible defect of vision, or something of that kind, is to be alleged, to some extent, excusing her in rushing out of this car, in some way.

Mr. FULTON: I object to that. There is no evidence that she rushed out yet.

Mr. LAMBERT: I submit that there is no question better settled than that the railroad company is not chargeable with any defect, unless it be shown it was brought to their attention, and that they are only required by the law to provide facilities for the ordinary, normal person. There are plenty of decisions on that, if your Honor wants them.

The COURT: What is the purpose, Mr. Fulton?

Mr. FULTON: The defense here is contributory negligence——

Mr. LAMBERT: Not altogether.

Mr. FULTON: It will be argued that this was in daytime, and that this plaintiff, if she had exercised the ordinary care of a person in her position, which a person in her position should have
28 exercised, she could have seen exactly the condition there, and the fact that she did not see and observe the step, as she did, was her own negligence; and I submit it is a question that ought to go to the jury to let them understand what her position was, to enable them to determine whether or not she did exercise the ordinary degree of care that a person in her position ought to have exercised and should have exercised under those circumstances, in getting off that car. It seems to me it is vital for the jury to have that evidence before them, as to whether or not her vision is perfect, so they can determine whether she exercised the ordinary care that a person in her position would have exercised.

The COURT: I assume that she is near-sighted, and her near-sightedness is corrected by glasses, so that it becomes purely a question for the jury, whether she was using, under the circumstances, such precaution as a person in like circumstances should have used; and near-sightedness is such a common complaint and corrected usually by glasses absolutely, almost, to normal sight, that it is for the jury to say whether or not she was using such precaution as a person under ordinary circumstances and like circumstances would have used. Now, I think it is quite true that if persons are blind and through their blindness have fallen into a hole when it could have been avoided by persons of ordinary sight, the blindness would be responsible for the injury, and then the question relates back to

whether the plaintiff under such circumstances would have ventured out in the street without some one to attend her. So it clearly becomes a question for the jury. I think that the question
29 is a proper one to be asked under those circumstances and with that limitation.

Mr. LAMBERT: Your Honor will allow me an exception?

The COURT: Yes.

(Question was repeated.)

A. For near-sightedness.

That she had worn glasses for about thirty years; that when the car reached the south end of the Aqueduct Bridge she arose from the seat, when the car came to a full stop, and walked to the front door, followed by her cousin and daughter; that she stepped out on the platform, looked around to her right and there stood a young woman busily engaged in conversation. The motorman and this young woman were busily engaged in conversation at my right, completely obstructing the view and the exit, and she turned to the left, to the east she believed, as that way was clear; that she looked down because she takes precaution all the time, knowing her sight is not good. She looked down and the way seemed perfectly clear; she saw a car standing opposite and she stepped down off of the step, and then immediately stepped off into what seemed space, and realized that she had suffered some terrible accident. She felt by the pain in her hip that it must be broken; there was no sign or signal or sound whatever given to her; there was nothing on the East side of the car to obstruct her way out on that side. On the West side of the car she saw nothing and her view was completely obstructed by those two people standing there busily engaged in conversation. The witness did not know when the woman, who was talking to the motorman, went on the platform. She was
30 standing there when the witness fell and when the witness left the platform on the other side. The witness judged that the woman talking to the motorman left her seat when the car had nearly reached the south end of the Bridge; she had been talking to the motorman nearly half way across the bridge and he had been answering her, but she left the car before it stopped. The witness did not know how far Miss Tullidge was in her rear as she walked out of the car but she supposed two or three feet; that she proceeded out of the car in the ordinary way, that is, when the car stopped she got up and walked to the front door, looked around carefully, after she had stepped out on the platform, and saw these two people who were completely blocking the view to the exit on the right or West side of the car, so she turned to the left, looked around carefully and stepped down from the first step and saw the car opposite.

Q. When you looked down how did it appear to you?

Mr. LAMBERT: I object. We have been all over that twice, in the first place, and in the second place, I think that is an improper question. It is leading, and the witness has answered that when she stepped off that she thought she was stepping off into space, and now for counsel to bring her back to that and ask how it appeared when she was looking down, I submit, is absolutely improper.

The COURT: I do not think the testimony is as counsel understands it. She said she saw nothing. No sign of anything to prevent her stepping off, and then she stepped off and realized she had stepped into space, and that perhaps is the best reason why
31 she may be permitted to say again what she saw, if anything, when she looked down.

Mr. LAMBERT: I will ask your Honor for an exception.

The COURT: Very well.

A. It appeared all right. I saw nothing whatever that would indicate that there was any dangerous or unsafe place for me to step in, or I most assuredly would not have stepped off.

Witness further testified she was placed in an ambulance and carried to the Georgetown University Hospital where she remained for ten weeks. She was then removed in an ambulance from the hospital to the train and lifted upon a stretcher through the car window and placed in a stateroom, and when she arrived home she was lifted out in the same manner; with the assistance of two crutches and some one of the family she was able to get about the room a little after she got home until sometime in February; after that she went around on two crutches until perhaps in February, when she used a cane and crutch, later in June she discarded the crutch and has since been compelled to use the cane. The pain the injury occasioned was terrible, particularly while the limb was knitting; she suffered excru*t*iating and has ever since suffered; there is great weakness in the leg and whenever the weather changes she suffers greatly and she has to fight rheumatism constantly. The leg is shortened by an inch and she wears a shoe built up and padded on the inside. Before the accident her health was almost perfect and she had always been an exceedingly active woman; that while she was in the hospital in Washington she suffered so much
32 from the injury that there were weeks that she could scarcely close her eyes; that she was thrown into a terrible nervous condition, which condition continued more or less for two months after she reached her home; that even yet she is exceedingly nervous at times; everything was done that could possibly be done to enable the witness to recover from her injury. Compared with her former self she is a nervous wreck. At present the witness can do a little around the house, but nothing compared to what she did before the injury. Before the injury she did all the house work except the washing,—everything, including cooking and ironing for herself and her four children. Since the accident she has been able to do very little and has been obliged to keep a servant.

Mr. Lambert objected to the statement about the keeping of a servant and moved to strike it out, which objection was sustained and the motion granted.

Witness further testified that she was unable to tie her shoe and that she does not begin to have the same motion in the leg since the accident that she had before; that the motion is impaired in every way, in walking and in going up and down steps. In going up the steps she always has to cling to the bannisters, and with a

cane, place one foot up on the step and then draw the next one up; in going down the stairs the witness has to go in a similar way. For a long time the witness could not lift her foot up at all and at the present time she has not the power to lift it that she has in the other foot. For a long time she had to take her hand to lift it; now she can lift it some but not as before. Witness testified that she
33 had spent about $1230.00 in her efforts to be cured of the injury;—$150 at the hospital; $250.00 to Dr. Gwynn; $110.00 to Dr. Vaughan; $1.50 for crutches; $5.00 for ambulance in Washington; $2.50 for ambulance at home; $150 for nurse; $35.00 for doctors at home; $25.00 for medicine and alcohol, besides other expenses.

On cross examination the witness testified in substance as follows: That she arrived in Washington Tuesday evening before the 23rd of August; that the 23rd was on Friday; that she had arranged to leave for home at 3.40 on Friday the 23rd; that she left the place where she was stopping in the city about ten or half past ten for Arlington; that they waited perhaps five or ten minutes in Georgetown before a car started across the bridge; that she was sitting on the left hand side of the car about four or five feet from the front window of the car; the lady who was sitting opposite to her left her seat when they were about two-thirds of the way across the bridge; she had been talking to the motorman for about half of the way across and before they reached the end of the bridge she got up and went out and was laughing and talking with the motorman, and seemed to be having a very gay time. She had gone through the door before the car stopped and had stepped out on the platform and turned to the right. Witness thought that she and the others in her party arose in the car about together; she did not observe her daughter turn and go towards the rear of the car as she was paying no special attention to her daughter at that time; she sup-
34 posed they would all go out together. Witness thought Miss Tullidge got up in the car about the same time witness did and she and witness both turned and were near the front door; she thought it was the custom generally to go out the front door; that being more convenient for them. When witness arose she faced the front door; the other side of the car was perfectly clear at that time; she did not remember looking towards the west at all, while in the car, but she supposed she would have to get up in a way facing west; when witness turned and faced towards the door she was three or four feet from it. She did not look back to see how far her daughter was from her. As soon as witness reached the door she saw the woman standing to the right with the motorman and the motorman standing very close; they were standing together there talking and completely obstructed the view and the exit. As soon as the car came to a full stop witness supposed that was the place to get off and she arose and walked to the door; she was not in a hurry and had plenty of time. There was no one to pass the witness before she reached the door. The other people in the car were at the rear end of the car. Witness was the first one out of the door except the young woman who was talking to the motorman. Witness went out of the car when it was time for them to go out. Witness did not re-

member whether there was a step from the floor of the car down to the platform or not. She presumed that the window in front around the vestibule was open as it was summer time. There was perhaps nothing to prevent her from looking straight through the window in the vestibule of the car, but she was not looking at
35 the windows, she was looking at the platform. She was looking around carefully; she is a cautious woman knowing that she is near sighted makes her extraordinarily cautious.

Mr. LAMBERT: I move that that be stricken out.

The COURT: I think you brought that out, she is giving you her reasons why she was looking around.

Mr. LAMBERT: I am asking her for a fact, as to whether or not she looked around, whether she looked in front of her.

The COURT: She has certainly got a right to state her reasons for knowing that she looked around. I think that is competent testimony.

Mr. LAMBERT: Your honor will allow me an exception.

The COURT: Yes.

WITNESS continuing; that she was about five feet three or four inches in height; when she reached the front door the motorman might have had his left hand on the conptroller, but she could not say; he was looking at the woman talking. Witness would say he had his back to the right side as she was walking out. He was standing to the right of the controller. The lady who was talking to the motorman was looking at him; they were completely absorbed in each other. Witness supposed that the woman who was talking to the motorman had her side towards her or her back, most probably her back; witness saw she could not get out that way and she turned to the left; she did not speak to the motorman and the lady who was talking to him; it was perhaps a step or two from the door to the step on the left of the platform; it might have been three
36 steps; when the witness reached the edge of the platform and before she began to step off she took hold of the hand bars with her right hand. After witness took hold of the bar she looked down carefully, the way seemed open; the car they were to take for Arlington was standing almost opposite it seemed, and there was no obstruction whatever, and she looked down as she always does, with care, stepped down the first step and then off into what seemed space; she held on as well as she could but the surprise of it—she could not hold her weight with her hand. The Arlington car was almost opposite. The car witness was going to take for Arlington was across the road standing by the station, a distance perhaps the width of "this court room." She first saw the Arlington car when she reached the door and turned to her left. She knew they were going to Arlington and supposed the car standing across the road was the car for Arlington. Her attention was directed to it by the car on which she was riding being stopped at the end of the bridge; she knew they were to take the one on that side because she had understood that this was the bridge car that was to take them across the bridge and then they were to take a car from the other side. Witness did not know how she knew that the car standing opposite the one she alighted

from was the car for Arlington. She might have heard her cousin say they were to take it on the other side of the bridge. The day on which the accident happened was a bright warm summer day; witness expected to make the train that evening, and in the meantime expected to look around Arlington; they did not expect to see everything there by any means; every arrangement was made for
37 leaving, the trunks were packed and strapped and return tickets in their pockets; the order had been left for the man to call for their trunks and there was really nothing for them to do; they expected to stop at the house which was 935 K Street and get a satchel. Their train left at the Sixth Street or Pennsylvania depot. Witness did not know that the car went to Arlington at certain stated times, and did not know what the length of time was or anything about that; she presumed the car ran like other cars every few minutes; she did not know that she had to walk a considerable distance after she got off of the car at Arlington, but supposed even now that the cars ran to the gate; she had not figured all that out.

When the witness left the hospital she was able to be up but very little of the day; after she reached home she was able to get about the room very little on crutches with the help of the children; she was in bed most of the time up until Christmas, and a greater part of the time after that she was weak and exhausted; witness left Washington on Tuesday on the 3.40 train, the last Tusday in October, 1907, and arrived home the next day; she employed her younger daughter immediately after arriving home to look after and care for her; this daughter was twenty one years of age. She did not employ an outside nurse. Paid her as she would a nurse. Witness did not walk to the platform on the other side; could not move; did not walk over with assistance of some one on each side of her. She remembers her daughter asking "Won't some one come and help my mother or help us," but does not remember saying to her
38 daughter "if you would go ahead, I would never have gotten this fall"; that she did not say that; that her daughter did not reply "You don't give anybody a chance, but rush right out ahead of us." That when she reached the Falls Church depot she did not say in reply to a question as to how it happened that it was her own fault for not looking.

Thereupon the plaintiff rested her case.

This is the substance of all the evidence taken on behalf of the plaintiff in chief.

Thereupon, the defendant, to maintain the issues on its behalf, joined, produced as a witness JULIUS G. COOPER, who testified that in August, 1907, he was a motorman on the Great Falls & Old Dominion line, and had been working as such for about a year; that on August 23rd, 1907, he was running the car across the Aqueduct bridge; that prior to his employment by the defendant he had worked as a motorman on the Capital Traction line for about six and one-half years; that he also worked for the Pa. & Southern Railroad Co., as well as the C. & O. Ry. Co.; that August 23rd was a bright day, and about eleven or eleven thirty he went across the bridge to

meet the Fort Myer and Arlington car; there were two cars due there, the Falls Church and the Arlington car; that when he stopped on the other side he always made a practice ever since he has been on the road, to take off his comptroller handle in one hand and turn to the right, and when the passengers came out he always said: "Go to the right, ladies, it is too high on this side"; and that he had always made a practice to lay his hand on the door facing; on this occasion several ladies came out; as near as he can remember it, the
39 first lady got out on the right side; but the second lady came out and bolted to the left; that it was done so quickly this second lady just shoved past him and knocked his hand right off and said: "I can get off on this side"; then the lady fell. That before the lady fell off, he said to her "Don't get off on this side lady, it is too high; you might fall"; this was said just as the lady was stepping out of the door, and was repeated by him, that is, it was said twice; that he does not remember making any other exclamation; as soon as the lady made a start he believed she was going to fall and grabbed at her, but it was all done so quick he could not do anything; that he was not talking to the lady who came out in front of the second lady; that he only spoke to the lady who came out in front, he was not talking to her, that she did not obstruct the way at all; she came out the door and went to the right and got off on the platform side; that she did not have any bundles at all with her; if she had any in her arms, witness did not see them, and did not pay any attention to them at all; several other persons came out behind plaintiff but witness did not take any notice of them; just as soon as he saw she was going to fall he jumped down behind her to pick her up; all the rest got off on the right hand side; on the platform side. That the platform on the right hand side of the car can be seen from the car; it is about sixty feet long; on the left side there is only the street or roadway, and no platform, and that is the reason why he never allowed any passengers to get off on that side, if he can prevent it; that when the lady fell he jumped down and helped to pick her up with a Mrs. Cuttshaw, and as soon as she was picked up she
40 walked across the street and sat on a bench, and asked witness if he could send her to the hospital, and he said he could; that he telephoned for the ambulance, and they came over, and he and the officer took hold of her arm to help her in the ambulance. She said "I don't think I can walk to the ambulance, and the officer said "Alright, we have a stretcher," and she said "Put me on the stretcher" so we did. That he and the officer picked her up and laid her down on the stretcher, and put her in the ambulance and sent her to the hospital; that he did not see her any more after that. That the young lady who came out behind Mrs. Hill, presumably her daughter, got off on the right hand side and came around the car to the seat where plaintiff was lying, and the daughter said "Mother, why did you get off on that side," and the lady said "Well, I thought I could." That on the Washington side of the bridge, the step of the car is about eight or ten inches above the ground; that on the south side of the bridge the step on the west side of the car is about twelve or fourteen inches down to the platform provided for

passengers to alight upon; that on the east side of the car at the south extremity of the bridge where the car stops, the step is about seventeen or eighteen inches—about twenty inches at the extreme; that at this time the Arlington car was standing about in front of the Falls Church Station; thereupon the witness testified as follows:

Q. Mr. Cooper, taking a person standing up in the car, and starting to go out where you stop on the south end of the bridge, could they see the platform through the windows in front? A.
41 The platform, yes, sir; see it very plainly if they just look out of the window.

Q. Was your front window open that day or closed? A. My vestibule window.

Q. Yes. A. My vestibule window was open that day.

Q. And anybody coming through the car could look out that vestibule window to the platform? A. Yes, sir.

Thereupon the witness further testified, that the step from the inside of the car on to the platform of the car where he stands with his comptroller is about eight or ten inches, and that when a person reaches that door standing up above his platform and looking out, they can very easily see the platform alongside of the car; they can see that platform from both the sides and front of the car.

On cross-examination witness testified that when operating the car he stands with his back to the passengers, right in the center of the platform of the car; that the comptroller is on his left, and the brakes to his right, and he stands between them; that the bed of the road is about six or eight inches from the bed of the driveway, and that there is a gradual rise in the elevation of the railroad bed from the bridge up to the point where the cars stop and a little beyond; that when he clears the bridge he stops his car about two feet from the end of the bridge. When Mrs. Hill shoved his hand down, she went off there so quick that he grabbed after her but just missed her; when the lady came out of the front door and after he said to the
42 passengers "Get off on the right hand side, please, it is too high on this side," he had the comptroller handle and reverse bar in his hand and beckoned to them in that way; that he was using his left hand to beckon; he had his right hand up against the facing of the door; that she pushed his arm down so quick he never gave it a thought; and he does not know anything about Miss Tullidge but there was nobody attempting to get off that side except the plaintiff. The witness Cooper also testified in cross-examination that he regarded the plaintiff as dangerous for them to step off on that side; that he put his hand up on that side of the platform and Mrs. Hill came right out and shoved his arm down; that if he had given it a thought she never could have gotten his hand down; she just shoved it away before he could give it a thought and stepped right off. That the first lady to get off was Mrs. Cutshaw, a nurse who had nursed him sometime previous; that the road-bed on which the rails rest is about six or eight inches above the road-way; that there is a gradual rise in the elevation of the road-bed from the Bridge up to the point of accident and beyond. Upon being asked by a juror as to whether or not the car was supplied with a gate wit-

ness testified that there was a door there which was only used in cold weather as protection to the motorman. Witness stayed with Mr-. Hill until the ambulance came and heard no one talk with her except a young lady whom he took to be her daughter.

Thereupon to further maintain the issues on its part joined, the defendant produced as a witness Mrs. ANNA C. CUTSHAW, who
43 testified that in August, 1907, she was living at Clarendon, Va.; that on August 23 she had occasion to use the Bridge car across the Aqueduct Bridge at or about 11 or half-past in the morning; that she saw Mrs. Hill on that day at the Aqueduct Bridge at 36th and M St-., when she got on the car; that what first attracted her attention to Mrs. Hill was the nervous condition she was in in wanting to get across the River in the car; when witness got on the car she did not know who the lady was but noticed that she seemed to be extremely nervous and wanted to get across the Bridge; meanwhile the main line train backed in and she wanted to get in that car; and in the meantime a gentleman said "Lady, this car will take you across just as quick as the other one,"and she returned to her seat; that it was a beautiful sunshine day, and some of the windows and in fact nearly all of the windows were opened, and the front and back doors were open; that she did not have any conversation with the motorman on the way over; when the car got across the river on the other end of the bridge she proceeded to get out of the car; just before she started out of the car the motorman took this thing off the car and turned around and said: "Ladies, don't go out this way," and she was proceeding to get out of the car when someone shoved here in the back; that she turned around to see who was shoving her, and there was a lady who got off on the wrong side of the car after the motorman told her twice not to get out on that side; the motorman said "Ladies, don't get out on this side; get out on the other side;" she first heard this when she was standing in the door ready to get out, and she turned to the other side to get out on that side; that is, the right side next to the
44 platform; that there is a pretty long platform on the right hand side; that she saw the lady when she went off on the other side; the motorman tried to catch her but he couldn't. that the motorman said this just as they were going out of the door; that when the lady fell she proceeded out the right hand side of the car and went around the car; the motorman and she reached the lady about the same time; that she and the motorman helped her to walk across the street, and the lady sat down on a bench; when the ambulance came she was assisted into the ambulance, and witness accompanied her to the hospital; that she heard her daughter say to plaintiff "Mother, why did you get out on this side of the car when the man told you to get out on the other?" She does not remember what was said by the mother in response to this remark.

Thereupon the witness testified as follows:

Q. Now when you stand up in that car and look to the west, that is, up the river, can you see the platform that the car goes up against? A. Yes, sir; yes, sir.

Q. Can you see it when you get to the door? A. Yes, sir.
Q. How tall are you? A. How tall am I?
Q. Yes. A. I am five feet four inches.

Witness further testified that she did not stop and talk to the motorman on the platform; that she wanted to get her car, and get home; that she felt this push on the back just as she was getting out of the door.

45 On cross-examination witness testified that she and the motorman assisted the plaintiff up, and that the plaintiff walked across the road to the station, and sat down on the bench; that she has been a professional nurse for about seven or eight years altogether; that she only paused on the platform to see what was that was shoving her in the back; that she did not say anything to the motorman at the time; that the motorman was standing in the place that he always takes when the car goes across and comes to a standstill across the river; he would take his comptroller handle off and turn around and tell the passengers not to get off that side of the car, get off on the other side; that there was not any gate on that side of the car; that the motorman just turned around carelessly put his hand back against the car; thereupon the witness testified as follows:

Q. How did you know his hand was on it? A. I know he put his hand there; he always puts his hand against the car; and when I turned I saw his hand stretched across there when this shove came in my back.

Q. When you saw that hand, tell us what part it was resting on? A. It was on the face of the car. That at this time he was right near the comptroller, about three or four inches.

That Mrs. Hill when she turned to the left after shoving witness, told the motorman that she could get off on that side; that she said "I can get out on this side of the car." That she pushed the motorman's arm and said she could get out on that side of the car; the plaintiff appeared to be in a great hurry, going to Arlington.

46 Thereupon to further maintain the issues on its part joined, the defendants produced as a witness Dr. HENRY G. FRYE, who testified as to the nature of the injuries as he found them, and who further testified that with the assistance of a person on each side there is no reason why the plaintiff could not have walked from the place where she fell across the roadway to a bench.

Thereupon the defendant to further maintain the issues on its part joined, produced as a witness JESSE A. RAMEY, who testified that at present he is working for Hugh Wallis, 420 12th St., in a café; that in August, 1907, he was conductor on the Great Falls & Old Dominion Railroad Company, and on the 23rd of that month was running on the bridge car. That at eleven A. M. on the 23rd the car ran across the bridge to the south side, and stopped just beyond the bridge at the platform. On the left side of the car the plaintiff was sitting near the door and several ladies sitting near; the lady sitting near the door arose to get off the car as the car stopped at the platform just

beyond the bridge. Plaintiff was right behind this lady; the motorman turned, giving directions to passengers to get off on the right on the platform; plaintiff turned to the left; he repeated, "The other side, please"; she paid no attention and stepped off the car. He rushed out to where the lady had fallen, and she was being assisted to the Falls Church depot, and he heard her remark that it was her own fault. Witness further testified that he was standing to the rear of the middle of the car; that it was a bright summer day, and part of the windows of the car were opened, and passengers could see
47 the platform when standing up on the inside of the car, through the window; that passengers could also see the platform when they reached the door; that the front of the car that surrounds the motorman was open. That the lady ahead of Mrs. Hill went out on the right hand side; that the motorman was standing on the front platform near the comptroller when plaintiff reached the door, facing the passengers; that the platform from the door stretching out is about six or seven feet; that his back was to the comptroller, that he had turned around; he had his comptroller handle in his hand at the time; he heard the motorman warn the second time; that during this time the plaintiff was turning to the left and did not pay any attention to him and stepped off the car; that Mr. Cooper and an officer put the plaintiff in the ambulance; that the step on the west side of the car to the platform is about six or eight inches. Thereupon the witness testified as follows:

Q. Can a person standing in the doorway of the car before they step down on the motorman's platform see out where the platform is on the west? A. Yes, sir.

On cross-examination the witness testified that he was standing in the rear of the middle part of the car; that is, a little to the rear of the middle, near the rear of the car; that he was not standing on the rear platform. That he had probably eight or ten pasengers; that at the time he was standing and was observing the motorman very closely, as no passengers were getting off the car in the rear; that it
48 was his duty to watch the motorman and the passengers when they got off. That it was a very strict rule of the company to have passengers not get on or off only on the side that the platform was provided. That the only notice he saw posted in the car was one to the passengers that they must not stand on the platform. That they left the north end of the bridge about eleven o'clock, and it took them about five minutes to cross; that when Mrs. Hill stepped off he rushed out; at the time he was standing in the rear of the middle of the car, right near the rear door; he does not know exactly how far, about five feet from the rear door, on the right hand or west side of the aisle; that at the time there were about four people between him and the front door; they were getting ready to get aff of the car; that none got off the rear end at all.

That none of the passengers passed him in getting off the car; that it was a very strict rule of the company that passengers should not get off on the east side; that they did not have any gate or bar on that side and that the door of the car was not closed but open; that he did not say anything to these passengers because they were getting off all

right; that the reason they were so particular about instructing passengers not to get off on the left hand side was because there was a him and the front door; they were getting ready to get off of the car; over by an automobile or something like that.

When the car stopped the first lady who got off the car was stepping down the step, and proceeded to the right, and the next lady was right behind. That Mrs. Cuthsaw and the motorman as-
49 sisted Mrs. Hill across the street; that the first he saw of Mrs. Catshaw was when she had ahold of Mrs. Hill, assisting her to cross the street; that he does not remember Mrs. Hill making any outcry, but he does remember that she said that she thought it was her own fault. That when the accident happened he got out of the rear end, on the left hand side, and they had her up by the time he got there.

To further maintain the issues on its part joined, defendant offered as a witness WILLIAM F. GATES, who testified that in August, 1907, he was employed by the Old Dominion Railroad Company at the pit; that he was at the present time employed at the Washington Gas Light Co., that he was with the Great Falls & Old Dominion Railroad Company for nearly two years, and left there on the 7th of September of the preceding year. On the 23rd of August, 1907, he was sitting on top of the plow-pit with his feet hanging down in the pit, facing across the river toward Washington; that the car came up to a stop and the lady started off to her right; that there was another lady coming out of the door, and she started to her left, and the motorman said "This side, lady" and the witness raised his head and she still walked along into the street; witness looked and saw another lady go across the street to the lady where she got up, and the motorman and this lady walked across the street with her; that the pit was about fifteen feet ahead of the front of the car; that the vestibule windows were open; and the motorman was standing against the comptroller with his back to witness. When the motorman gave this warning the plaintiff had one foot out on the step and witness
50 would judge one foot was in the door; he could not see the feet; that he refers to the step coming out of the car on to the platform of the car.

On cross-examination witness testified that he shifted the plows to and from the through cars on the Old Dominion Line to Georgetown and Great Falls, when they reached this point; that he is immediately west of the Arlington Station; when the car stopped he was sitting on the pit, looking up at the car itself. In response to a question of one of the jurors witness stated that the motorman was standing against the comptroller with his back to witness; that when this lady fell the motorman got off the car, and another lady, he supposes Mrs. Cutshaw, went out on the street and across the street with the lady, as he had already stated.

Thereupon counsel for the defendant read to the jury the testimony taken by way of deposition *de bene esse* of Mrs. L. E. BARNES and her two children, OUIDA OPHELIA BARNES, and WALTER BARNES, substantially as follows: Mrs. L. E. Barnes testified that she resided at 1654 Valmont Street, New Orleans, State of Louisiana; that in August, 1907, she resided at McComb City, Bike County, Mississippi. That in August, 1907, she and her two children went to Washington, New York, Philadelphia, and attended the Fair at Jamestown Exposition. That they arrived in Washington on a Thursday evening, and remained there until the following Tuesday week when they west to New York; that her party was composed of herself, her mother and two children; that in August, 1907, her boy Walter was eight years old, and her girl was eleven years old; that when
51 they were in Washington at that time they went across the river on the car of the Great Falls & Old Dominion Railroad Company; that they boarded the car at the Washington side of the river, somewhere between eleven and twelve o'clock; that her mother and two children were seated in the rear of the car, and she was seated near the front; there was a party of three ladies, her own party, and she thinks another lady was on the car at said time; that the car was not crowded; that they went across to the Virginia side; that when the car reached the station on the Virginia side of the river it came to a perfect standstill, and they all arose, including the lady, and the three ladies who were directly in front of them; all of them smaller than witness; that witness could see over their heads; the plaintiff stepped through the car on to the platform, and the motorman said "Step to the other side, please," and she believes said it a second time. The lady paid no attention but went to the left side of the car and stepped right off, and the motorman tried to catch her but missed. They were all on the platform at the time the motorman got the words out of his mouth; witness was through the door and on the platform and stepped off on the right side; that the motorman motioned with his hand and said to the lady "Step to the other side, please," to the right; addressing the lady particularly; that the motorman spoke twice to her; repeated the words the second time, loud enough for witness to hear him the first time when she was inside the door of the car; that witness was the third person back of the lady, and could see her over the heads of the other ladies; that the motorman grabbed towards the lady,
52 but she was out of his reach; that the plaintiff appeared to be in a hurry; in fact, they were all in a hurry to get out of the car; that she heard the plaintiff say to someone, whom witness supposed to be her daughter "If you would go ahead I would never have gotten this fall," and the daughter remarked "You don't give anybody a chance, but rush right out ahead of us;" those were the only remarks witness heard, except that her hip hurt terribly, and she could not put her foot to the ground; that Mrs. Hill rushed right out of the car in a hustling way. On cross-examination witness testified that her children were sitting at the rear of the car, nearer the rear door than the front; that her mother was sitting perhaps two feet from the rear door, perhaps nearer, she did not observe

anyone standing talking to the motorman on the front platform; as the plaintiff was stepping through the door she heard the motorman say "Step to the other side, please;" that witness was just inside of the car, there was one lady in front of her; probably a foot from the door, right in the aisle; that as the motorman made this remark to the plaintiff she did not pay any attention to him but started to the left side of the car, and he repeated it a second time and grabbed for her; by that time witness was passing through the door. On re-direct examination witness testified that if the plaintiff had listened to the motorman when he first made that remark she would not have gotten hurt if she had responded to it; that the plaintiff's attitude was such that she did not appear to pay any attention to him.

53 The witness Mrs. Barnes also stated on cross examination that they were all standing in the aisle together; that she did not observe anyone standing on the front platform talking to the motorman; that the motorman turned around as the lady (plaintiff) stepped through the door on to the platform and said "Step to the other side please;" that he was standing right against his wheel or brake or whatever it is; but that she has no idea as to what side of that car that is; that he was standing with one hand on the wheel; he was leaning right against the brake; his back was against the end of the car; when he turned around and spoke witness was probably a foot inside the car door; that the motorman spoke those words as he turned around; that he faced them all; that the lady who went out first was between motorman and plaintiff; that there were three ladies in front of her, but just the position they were in she could not state; does not know whether the lady who fell was to the left or right of the motorman; that the motorman did not stop herself and the others but that is what he said to all of them; that she was on the platform when he grabbed for the lady, she was stepping right through the door.

Q. The motorman then had let the lady who got hurt pass out of the door, and also the second lady who was immediately in front of you pass out of the door and you had gotten yourself into the doorway before he made any effort to catch this lady who got hurt? A. That I cannot answer for I do not know, whether he let one or two or what. He did not let any of us pass. We all stepped on to the platform.

54 That the motorman stood there and directed the rest of her party to follow her off on the right side.

Q. Now, you are sure that motorman grabbed for Mrs. Hill? A. Why, he motioned to catch her.

Q. You are sure of that? A. Well, yes sir, I saw him lean over towards the side of the car she fell off.

Q. Was this simultaneous with his saying "This way ladies"? A. Well I could not say that at all.

Q. How long was it after? A. It was immediately.

Q. All at the same time then, as far as you could judge? A. Yes sir.

That the motorman said "Step to the other side, ladies; step to

the other side, please," that he stepped to the side of the car to catch her; he made a motion to catch her.

On re-direct examination, witness stated could not tell the distance between the two of them when the motorman made the remark; could not tell whether she (plaintiff) was outside or inside of the door; if plaintiff had listened when the motorman made the first remark she would not have got hurt. Could not tell whether she had ample time or not after the remark was made to have avoided getting off on that side of the car; plaintiff was right at the door when he made the remark, if she had stopped then she would not have got hurt; says she really could not say where the lady
55 was sitting but she was not the lady sitting next to her, she was one of the three.

Thereupon OUIDA OPHELIA BARNES, testified that she lives in New Orleans; she is eleven years old; that she remembers a trip to Washington in 1907, and that they took a street car trip across the Aqueduct bridge over into Virginia; that she was with her mother, her brother and her grand mother and was sitting at the rear end of the car with her back towards the east; that when they reached the south end of the bridge this lady rushed out ahead of her mother, and as she went to step down, the motorman says, "This side, Lady" and she did not seem to hear him and he said it again, "that is all I remember." That the motorman had turned around and was facing the car.

Q. Could you see the lady when he first told her? A. No sir. Well, you could see her black dress, but she was standing up there ahead of mother, and the motorman says "this side lady," and then I heard him say it again, and that is all I remember.

And she further testified that she was standing up, and was the very last one that got out of the car, and everybody was in front of her, that she could not see the front; she could not see the lady when she fell, she was too far back; her mother was right behind plaintiff.

On cross examination witness testified that there was a lady sitting on the other side of the car near the front and she thought she had a lunch basket in her hand; that when the car stopped on the Virginia side she didn't see, didn't know what had become of her; that
56 the plaintiff rushed out before the car came to a full stop; plaintiff's daughter followed and then came witness' mother and witness was last of all; that when the motorman said "This way lady" witness had moved about two feet from her seat, that is about four feet from the rear of the car; that when the motorman said that, plaintiff was in the act of stepping from the car on to the platform and she thought she saw the lady's black dress; she could not tell just where the lady was, was not paying attention to her but was looking out of the window of the car at the time she hea-d the man say "This way lady."

Q. Well, now, when you get down to the fact, Ouida, about all that you can be positive about is that when you were getting out of the car, you heard the motorman say "This way, lady" twice, and the next thing you knew, the lady was on the ground? A. Yes, sir.

That there was no gate of any description on the left side of the car; that the step on that side was about two feet from the ground; she did not remember seeing the conductor after he took up the fares; that she went around where the lady lay on the ground and did not hear anybody say anything about her rushing off the car.

On re-direct examination witness says that she thought she saw a part of the lady's black dress, didn't see the lady turn either way, didn't see her after she saw a part of her black dress at the door; she did not see the lady at all until she had gotten out and walked around; that she didn't see the lady at all.

57 Thereupon WALTER BARNES testified that he lived in New Orleans and is nine years old; that in the summer of 1907 he was in Washington with his mother, sister and grandmother; they took a car to go across the Aqueduct Bridge over to General Lee's place at Arlington; that he was sitting in front in the car with his mother, and his sister and grandmother were near the rear; that he does not recollect what happened when they got over to the south end of the car. On cross examination he testified that he did not know how many people were in front of his mother, and that he heard nothing when they were going out.

Thereupon to further maintain the issues on its part joined the defendant produced as a witness WILLIAM E. PHILLIPS, who testified that he measured the distance from the floor of the car down to the platform where the motorman stands, and that it is ten inches.

On cross-examination he testified that the distance on car No. 9 he had measured yesterday.

On re-direct examination witness testified that the step on the west side was seventeen inches above the platform; that the platform itself is about ninety feet long.

And thereupon the defendant rested.

This is the substance of all the testimony taken on behalf of the defendant.

Thereupon plaintiff in rebuttal produced as a witness Miss MARGARET HILL, who testified that on this occasion the conductor was standing on the rear end of the platform.

And this is the substance of all the evidence taken in the [illegible]

[illegible] otherwise directed by the defendant or its employees; and if they find that the plaintiff disregarded this duty and without direction from,

or request of the defendant or its agents, attempted to get off on the other or east side of the car where there was no platform, and was thereby injured, their verdict must be for the defendant.

3. The jury are instructed as a matter of law that the failure to ke-p a door or gate or other contrivance closed on the east side of the front platform of the car mentioned in this suit was not an implied invitation on the part of the defendant to the plaintiff, as a passenger, to alight from said car on that side, provided they further find from the evidence that the defendant provided a safe platform on the other or west side thereof, for use of plaintiff as well as other passengers.

4. The jury are instructed as a matter of law that if they find from the evidence that the plaintiff had knowledge of the existence of the platform on the west side of the car, or in the exercise of
59 ordinary care and prudence could or ought to have seen said platform as she was leaving the inside of the car and before actually alighting therefrom, and nevertheless attempted to leave the car on the east side, where no platform had been provided, and was injured, then their verdict should be for the defendant.

6. The jury are instructed as a matter of law that if they find from the evidence that the plaintiff had knowledge of the existence of a platform on the west side of the car, or in the exercise of ordinary care and prudence could, or ought to have seen, said platform as she was leaving the inside of the car, or as she was stepping from the door to the front platform of the car, and before actually alighting therefrom, or if they find that she did not see said platform, and in the exercise of ordinary care and prudence could not have seen said platform, but that the motorman gave timely direction to the plaintiff to leave the car on the west side and she disregarded this direction and left the car on the east side where no platform had been provided, then she did so at her own risk, and their verdict should be for the defendant.

7. The jury are instructed as a matter of law that if they find from the evidence that the plaintiff in alighting from the east side of the front platform of the car saw or ought to have seen, or by the exercise of ordinary care and prudence could have seen that there was no platform on that side but only an open roadway some distance down, and notwithstanding attempted to alight, then the plaintiff was guilty of contributory negligence and cannot recover in this action.

passenger desiring to [illegible] otherwise directed by the defendant or its employees; and if they find that the plaintiff disregarded this duty and without direction from,

has a direct personal interest in the result of the suit the temptation is strong to color, pervert or withhold the facts. Therefore the deep interest which the plaintiff may have in the result of this suit should be considered in weighing her evidence, and in determining how far, or that what extent, if at all, she is worthy of credit.

To each and every of the above prayers plaintiff through her counsel then and there objected at the time each was offered, which said objections were sustained by the court and exceptions duly noted by counsel for the defendant and said exceptions then and there and at the time each was taken, entered upon the minutes of the court.

Thereupon the plaintiff offered the following prayers:

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2. The court instructs the jury that if they find from all the evidence in the case that the defendant stopped its car for the plaintiff to alight at a place where it was safe on one side of the car for her to alight and dangerous on the other side for her to alight, then it was the duty of the company to exercise the highest degree of care and caution to prevent the plaintiff from getting off on the dangerous side, and if the jury find from all the evidence that the company failed to exercise such care and that such failure was the sole cause of the injury to the plaintiff, then they will find for the plaintiff.

3. The jury are instructed that if they find that plaintiff was a passenger on defendant's car, she as such a passenger had a right to assume that any place where the company's said car was stopped for

62 the purpose of allowing her to alight therefrom, would be reasonably safe; and she had a right to regulate her conduct on that assumption, and the degree of care and caution which she was bound to exercise was only such as a person of ordinary care and caution, acting upon the assumption that the place where she was alighting was in a reasonably safe condition, would have exercised under the circumstances of this case.

To each and every of the above prayers defendant through its counsel then and there objected at the time each was offered, which said objections were overruled by the court, and exceptions duly noted by counsel for the defendant and said exceptions then and there and at the time each was taken, entered upon the minutes of the court.

Thereupon the court charged the jury as follows:

The COURT (Mr. Chief Justice Clabaugh): Now, gentlemen, you

are a new jury here, so far as the court is advised, and therefore, I feel that I ought to perhaps go more fully into the instructions in this case than I otherwise would if I felt certain you were familiar with the ordinary routine in the trial of cases. So that while some of you may be familiar, others may not be, and therefore I shall err on the side of what I shall suppose to be the safer side, and that is to go into it more fully than I ordinarily would.

Now, primarily, a case is presented to the jury by the attorneys for the respective sides; they present their case to you; they make their arguments endeavoring to sustain positions which they have undertaken in the case. Your duty is to determine finally upon the questions presented, but that duty is confined to the presenta-

tion of facts. It

on the one hand direct your verdict, nor shall any feeling of antagonism direct it in any way. So that the personnel of the parties to this cause, plaintiff and the defendant, must be, so far as the finding of your verdict is concerned or so far as it will affect the finding is concerned, be absolutely impersonal. It does not make any difference to you who the plaintiff is or who the defendant is; you are to decide the case according to the law and the facts. So that I shall not say anything more about that, because really I believe you will perform the duty before you and decide this case as you think the testimony directs you to decide it.

The plaintiff in this case has sued the defendant because she alleges she was injured by reason of the failure of the defendant to care for her, to exercise the degree of care, as you will after-
64 wards see, that she was entitled to, upon landing at the place where she was going. The defendant, on the other hand, says that they did provide a proper place for the getting off of their cars, but that "you, by your own negligence—" that is, the defendant says to the plaintiff "by your own negligence, you contributed to the cause of your injury, and therefore, under the law, you cannot recover." So you see the different positions that are taken.

Now then as to the burden of proof, first. When a plaintiff comes into court and sues a defendant, the law says to the plaintiff, "You are suing and therefore you must satisfy the jury by a fair weight of the testimony that you are entitled to recover." That is, the law says the plaintiff must prove by a preponderance of evidence her right to recover. Now that is true in this case. The plaintiff must prove by a preponderance of testimony that she is en-

titled to recover in this case; and preponderance means that the testimony of the plaintiff must weigh more than the defendant's testimony. If it weighs just exactly the same, then the plaintiff would not be entitled to recover, because the law says that the plaintiff's testimony must weigh more than the defendant's. So in this case the plaintiff must prove by the fair weight of testimony that she is entitled to recover

Now wherever a defendant, therefore, comes in and says "your injury was occasioned by your own negligence," that is an affirmative statement, don't you see, on the part of the defendant—the defendant says, "your injury was occasioned by your own negligence," so the law says that "if you charge that the injury was occasioned by her own negligence, you must prove it by a fair weight of testimony."

66 So that where contributory negligence is asserted on the part of the defendant; that is, the defendant says that the plaintiff was guilty of contributory negligence, as I have explained it, then the defendant must show by a fair weight of testimony that the plaintiff did contribute to her injury by her own negligence, and from that point of view, the burden of showing contributory negligence on the part of the plaintiff is placed upon the defendant, and the defendant must show it by the fair weight of testimony. So if the question were to narrow itself to the question as to whether there was contributory negligence or not in the case, and that burden being borne by the defendant, the defendant must show it by the fair weight of testimony. So that if the testimony weighed the same, the defendant would not have borne the burden imposed upon it. So that these are the general propositions of law that apply in this case.

Therefore, gentlemen, having outlined the general principles of law applicable to these cases, I will read you here the prayer upon that subject:

"The jury are instructed, as a matter of law that the burden is on the plaintiff to prove, by a preponderance of the evidence, to the satisfaction of the jury, that the defendant was guilty of negligence in failing to provide a safe place in which the plaintiff might alight,

[illegible] witness from the same standpoint that you judge other facts in this world and in the ordinary experience which you have derived from contact with daily life. So that you stand there looking at a witness, surrounded by all the circumstances, the environment, the way they testify, the impression they make upon you upon the stand, whether frank or otherwise: all of those questions enter into your mind.

68 You have likewise the right to take into consideration the question of interest of persons having an interest in the case. You have the right to consider that question and to determine in your own minds as to whether that interest has caused them to testify truthfully or untruthfully. You have the right to weigh all the testimony, to examine in your minds the question, has this witness perverted the truth, or has she or *her* stretched it because of any interest they may have in the case; all of those things are circumstances in the case, which you are entitled to look at and consider. So that you weigh the testimony of every witness, and you weigh it with whatever interest they may have. You may decide that their interest has affected their testimony or you may decide that it has not affected their testimony. So that you have the fullest right to consider all those questions, as well as the environment and surrounding circum-

stances connected with the testimony of a particular witness. And you have the right to go further than that. If you hear the testimony of any witness or witnesses, as the case may be, and you are convinced in your own mind from the testimony of that witness, that he or she has, knowingly, testified falsely about some material fact in the case, where the witness could not have been reasonably mistaken; in other words, has falsified as to one material fact in the case, with the statement I have made in connection with it, then you are at liberty to believe nothing that witness has said; or, you are at liberty to believe part only, or you are entitled to believe it all, just as you choose. So you see that you have the widest range,
69 which human experience has taught is the proper one, to look at the witness and the testimony that witness may give, and then make up your mind as to whether you believe or don't believe the witness in question. So much therefore for the preliminary questions that now suggest themselves as proper to state to you.

Now as to the particular law, if I may use that expression, in connection with the case at bar.

"The jury are instructed that it was the duty of the defendant company to exercise the highest degree of care and caution to provide a reasonably safe place at its regular stopping point or station at the south end of the Aqueduct Bridge for its passengers to alight from its cars; and that it was also the duty of the defendant company to exercise a like degree of care—that is, the highest degree of care and caution—to provide a safe means of egress from its cars at said point, so that passengers alighting from its cars at such point or station would not alight in a dangerous or unsafe place; and if the jury find from all the evidence in the case that the defendant company failed to exercise such care, and that such failure was the immediate and direct cause of the injury to the plaintiff, then their verdict should be for the plaintiff."

Now that prayer is so plain that it does not seem to me I can add anything to its understanding by having anything to say in connection with it, except that it is encumbent upon a railroad company to exercise the highest degree of care and caution in carrying its passengers, and likewise in providing a reasonably safe place
70 for their alighting from a car, and therefore, if you find in this case that they did not exercise that care and did not furnish a safe place from which the plaintiff could alight, and you also find that the injury complained of in this cause was inflicted by reason of that want of care, then the plaintiff is entitled to recover in the cause.

"The Court instructs the jury that if they find from all the evidence in the case that the defendant stopped its car for the plaintiff to alight at a place where it was safe on one side of the car for her to alight and dangerous on the other side for her to alight—if you shall so find; that is, if you find it was safe on one side and it was unsafe on the other—then it was the duty of the company to exercise the highest degree of care and caution to prevent the plaintiff from getting off on the dangerous side, and if the jury find from all the evidence that the company failed to exercise such care and that

such failure was the sole cause of the injury to the plaintiff, then they will find for the plaintiff."

In other words, if you shall find from the evidence in this case that the railroad company had a safe place on one side, and another place on the other side which was unsafe—if you shall so find—then it was encumbent upon the defendant company to exercise the highest degree of care and caution to prevent the passenger from alighting on an unsafe side, and if you find that they did not so exercise that degree of care and caution, and the injury in this case resulted solely from that fact, then the plaintiff is entitled to re-
71 cover.

"The jury are instructed that if they find that plaintiff was a passenger on defendant's car"——

I have just noticed, gentlemen, that while the criticism has not been made of these prayers, in reading them, my attention was drawn to the fact that they do not state, if they find she was a passenger on the car. But, of course, you understand that that is preliminary to a right of recovery. It must be shown that she was a passenger on the car, and I have only drawn your attention to that so as to avoid any question about it. Of course, if you do not find she was a passenger, then she would not be entitled to recover at all. So that that statement must be applied to all the prayers that I have given you.

"The jury are instructed that if they find that plaintiff was a passenger on defendant's car, she as such a passenger had a right to assume that any place where the company's said car was stopped for the purpose of allowing her to alight therefrom, would be reasonably safe; and she had a right to regulate her conduct on that assumption, and the degree of care and caution which she was bound to exercise was only such as a person of ordinary care and caution, acting upon the assumption that the place where she was to alight was in a reasonably safe condition, would have exercised under the circumstances of this case?"

That is to say, the assumption of law being that the defendant company will provide a reasonably safe place for a passenger to alight, then the passenger has the right to assume that the
72 place will be safe, reasonably safe, I mean, and that in getting off, they are only to exercise such reasonable caution themselves as persons would ordinarily exercise under like circumstances. Do you want me to read this prayer on the question of concurrent negligence. I have explained it.

Mr. FULTON: I do not think that is necessary. You have explained it.

The COURT (continuing): Now in connection with these prayers that I have read you, which go to the question as to whether or not a reasonably safe place was provided; and if it was provided, did they take such care and caution as the conditions warranted in seeing that passengers alighted upon the safe side—in connection with that instruction, I read this to you:

"The jury are instructed that there was no duty imposed by law upon the defendant to keep a gate or door or other contrivance closed

on the east side of the car mentioned in this case, which is the side opposite the platform placed upon the ground, in order to prevent passengers from alighting from that side, but that other reasonable or proper means or methods may be adopted by the defendant to warn passengers to leave on the west side which is nearest the platform; therefore if they find from the evidence that the motorman gave timely direction to the plaintiff to leave the car on the west side where a platform was provided, and that the plaintiff disregarded this direction and left the car on the east side, where no platform had been provided, then she did so at her own risk and their
73 verdict must be for the defendant."

That is to say, gentlemen, you are instructed, as a matter of law, that the law does not compel the defendant company in this case to put up a door or gate or any other contrivance of that kind to keep people from going off on any particular side. The law does not compel that. If does not say, in terms, you must have a gate or door, or what not; it only says that you shall use such means and such methods as will protect people, or be reasonably likely to protect people from going off the platform. So that applying that theory of the case, the Court says to you, that if you find from the evidence in this case that the defendant's motorman gave timely notice to the plaintiff in this case that she must not go off the east side of the car because it was dangerous, but that she must go to the west side and get off where a platform was provided. If he gave her timely notice, in other words, that she was to alight on the west side where there was a platform, and she disregarded that notice and went off on the other *wise* and was injured, then she would not be entitled to recover.

Now, gentlemen, I have therefore explained the law to you; I have said nothing about the facts; the facts have been argued to you by the respective counsel; you have heard those facts, and you apply the facts to the law, as I have endeavored to give it to you, as plainly as I can.

Now if you find in this case that the plaintiff was injured by reason of the negligence of the defendant company in failing to provide a safe place, or in failing to give her timely notice
74 of the danger on one side and the safety on the other, then the plaintiff would be entitled to recover in this case. If you find, on the other hand, that the accident was due to the negligence of the plaintiff in the case and not to the defendant, then the defendant is entitled to your verdict. Consequently, you have to find one of two verdicts. If you find for the defendant that ends the case, and you simply say you find for the defendant; but if you find for the plaintiff in the case, then you have to go a step further, and you have to ascertain how much she is entitled to as compensation for the injury and the suffering which she has endured. So the court gives you this prayer relative to that phase of the case:

"If the jury find for the plaintiff, they are instructed that in estimating the damages sustained by her, they should take into consideration the extent, duration and permanency of said injuries; the mental and bodily suffering resulting to her from such injuries; the extent to which such injuries have prevented her from attending

to her usual duties, as well as the expenses incurred by her in her endeavors to be cured of said injuries."

In other words, if you find for the plaintiff, you are entitled to take into consideration all those things, and award to her such damages, as, in your opinion, will reasonably compensate her for this suffering, and so on.

Your verdict, gentlemen, must be unanimous; you must all agree upon a verdict, and if you find for the plaintiff then you say, upon the clerk asking if you have agreed upon a verdict in this
75 case, "We have", and then he will ask you "for whom do you find", and if you find for the plaintiff, as I have said, you say "we find for the plaintiff and assess the damages at ——", whatever amount you shall assess them. If you find for the defendant, you simply say "for the defendant." Now, as I have said, your verdict must be unanimous and it is proper for you, when you go to your room, to select some one who shall act as your foreman and will answer for you when the clerk propounds the interrogatories.

Mr. LAMBERT: If the court please, I desire to note an exception as to so much of your Honor's charge as indicated that the plaintiff would sustain the burden of proof by showing that she was a passenger and the injury, as contrary to the prayer which I offered. And I renew my objection if that is necessary, to the prayers.

The COURT: Very well.

And all of the exceptions hereinbefore referred to were noted on the minutes of the court as they were severally taken, and the defendant prays the court to sign and seal this, its bills of exception, to have the same force and effect as if the rulings herein contained were set out in separate bills of exceptions, which is accordingly done this 10th day of May, 1909, *nunc pro tunc*.

HARRY M. CLABAUGH,
Chief Justice.

We consent to the above bill of Exceptions.
LECKIE, FULTON & COX,
Attorneys for Plaintiff.
WILTON J. LAMBERT,
Att'y for Defendant.

76 *Designation of Record.*

Filed May 8, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 49915.

GERTRUDE T. HILL, Plaintiff,
vs.
GREAT FALLS & OLD DOMINION RAILROAD COMPANY, a Corporation, Defendant.

John R. Young, Esq., Clerk, Supreme Court of the District of Columbia:

Please include in the transcript of record for the Court of Appeals in the above entitled cause the following:

1. Declaration and notice to plead.
2. Defendant's plea.
3. Joinder of issue.
4. Verdict of jury.
5. Motion for new trial.
6. Môtion for new trial overruled and copy of judgment on verdict.
7. Memorandum showing the giving of supersedeas bond on appeal.
8. Term prolonged thirty-eight days for purpose of signing bill of exceptions.
9. Time to file record extended to June 1st, 1909, inclusive.
10. Bill of exceptions and order making them of record.

WILTON J. LAMBERT,
Attorney for Defendant.

77 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia hereby certify the foregoing pages numbered from 1 to 76, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 49915 at Law, wherein Gertrude T. Hill is Plaintiff and Great Falls and Old Dominion Railroad Company, a corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 27th day of May, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*,
By W. E. WILLIAMS,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 2029. Great Falls and Old Dominion Railroad Company, a corporation, appellant, *vs.* Gertrude T. Hill. Court of Appeals, District of Columbia. Filed May 28, 1909. Henry W. Hodges, clerk.